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OFFICE OF PETITIONS

In re Patent of :
Tseng et al. :
Application No. 09/892,014 : DECISION
Filed: June 25, 2001 : ON PETITION
Attorney Docket Number: TSENG- :
8901 :

This is a decision on the Petition to Revive Unintentionally Abandoned Application under 37 CFR 1.137(b), filed March 24, 2006.

The petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed February 24, 2004. The Office action set a three (3) month period for reply. No timely and proper reply having been filed, this application became abandoned May 25, 2004. A Notice of Abandonment was mailed April 5, 2005.

Applicant filed an improper CPA on August 24, 2004, wherein Applicant stated that the extension fee would be paid after Applicant received a Filing Receipt.

Applicable Law, Rules and MPEP

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed); (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). Applicant lacks item (1).

As to item (1), Applicant has not submitted a reply to the action. Applicant must respond to the Office action.

Applicant is advised that CPA practice no longer applies to utility applications filed on or after July 14, 2003.

The MPEP 706.07(h) IV, IMPROPER CPA TREATED AS RCE, provides that

37 CFR 1.53(d)(1) has been amended to provide that CPA practice under 37 CFR 1.53(d) does not apply to utility and plant applications. Effective July 14, 2003, a CPA may only be filed if the prior nonprovisional application is a design application that is complete as defined by 37 CFR 1.51(b). In the event that an applicant files a request for a CPA (on or after July 14, 2003) of a utility or plant application that was filed on or after June 8, 1995, the Office will automatically treat the improper CPA as an RCE of the prior application (identified in the request for CPA) under 37 CFR 1.114. If the CPA does not satisfy the requirements of 37 CFR 1.114 to be a proper RCE (e.g., lacks a submission under 37 CFR 1.114(b), or is not accompanied by the fee set forth in 37 CFR 1.17(e)), the improper CPA will be treated as an improper RCE, and the time period set in the last Office action (or notice of allowance) will continue to run. If the time period (considering any available extension under 37 CFR 1.136(a)) has expired, the applicant will need to file a petition under 37 CFR 1.137 (with the lacking submission under 37 CFR 1.114(b) or fee set forth in 37 CFR 1.17(e)) to revive the abandoned application.

Analysis

Here, Applicant filed an improper CPA request, which was treated as a Request for Continued Examination under 37 CFR 1.114. However, a RCE requires a fee, and as such, the RCE was improper. Applicant files the instant petition and fee; however, Applicant still has not filed the RCE fee (\$395.00).

Applicant must submit the RCE fee before the petition may be granted. The application is abandoned, and no extension of time (or fee) is available.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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